

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION**

ANGELO PERRY

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

1:06-CV-36 (WLS)
1:92-cr-1

28 U.S.C. § 2255

ORDER

Before the Court is a Report and Recommendation from United States Magistrate Judge G. Mallon Faircloth (Doc. No. 299), filed August 1, 2006. It is recommended that Petitioner's *pro se* petition for relief pursuant to Fed.R.Civ.Pro. 60(b) and 81(a)(2) be treated as a petition for relief pursuant 28 U.S.C. § 2255 and that the petition be denied as successive and untimely by AEDPA statute of limitations. Petitioner has filed an objection essentially re-asserting previously made arguments and asking that this Court reject the Report and Recommendation. (Doc. No. 300).

This Court and the Eleventh Circuit Court of Appeals has rejected several motions, either explicitly filed by Petitioner as § 2255 petitions under other titles. In each case, Petitioner has been informed by both courts that his petitions for relief were untimely under the AEDPA. Now Petitioner seeks to "attack" the most recent judgment rejecting his request for relief under the guise that Fed.R.Civ.Pro. 60(b) and 81(a)(2), when the law is clear that any pleading collaterally attacking a federal conviction is a petition for relief under § 2255. Petitioner admits that in attacking the most recent judgment, he is still attacking the underlying conviction. The U.S. Supreme Court has consistently held that motions with various labels that seek to attack an underlying conviction are petitions for relief under § 2255. Gonzalez v. Crosby 125 S.Ct. 2641 (2005). Petitioner has been told this on numerous occasions and, in fact, ordered at one point not to file any more successive petitions without obtaining permission from the Eleventh Circuit Court of Appeals. (Doc. No. 218).

Upon full consideration of the record, the Court finds that said Recommendation

should be and hereby is, **ACCEPTED, ADOPTED** and made the order of this Court for reason of the findings and reasons set out therein, together with the findings made, reasons stated and conclusions reached herein. Accordingly, Petitioner's latest motion (Doc. No. 289) is **DENIED** and Petitioner's successive habeas petition (Doc. No. 289) is **DISMISSED.**

SO ORDERED, this 19th day of December, 2007.

/s/W. Louis Sands
W. Louis Sands, Judge
United States District Court